# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

THOMAS E. DeHART	)
Claimant VS.	)
<b>v</b> 3.	) Docket No. 230,75
CORE CARRIER CORPORATION	)
Respondent	)
AND	)
LIBERTY MUTUAL INSURANCE COMPANY	)
Insurance Carrier	)

### ORDER

Respondent appeals from a preliminary hearing Order for Medical Treatment entered by then Assistant Director Brad E. Avery on July 8, 1998.

#### ISSUE

Did the Assistant Director exceed his jurisdiction in designating Edward J. Prostic, M.D., as the authorized treating physician when respondent had designated a different treating physician and without allowing respondent an opportunity to provide a list of three physicians as required by K.S.A. 1997 Supp. 44-510(c)(1)?

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board finds the issue raised by respondent is not a jurisdictional issue and the Appeals Board is therefore not authorized to review the Order for Medical Treatment at this stage of the proceeding.

Claimant injured his right knee on November 6, 1995. Respondent authorized treatment with Gerald F. Dugan, M.D. On March 5, 1997, Dr. Dugan performed surgery on claimant. Dr. Dugan determined claimant had reached maximum medical improvement and released claimant from further care on August 28, 1997. But claimant continued to have difficulties with his knee.

Claimant asked for additional medical treatment. Respondent authorized claimant to return to Dr. Dugan. Rather than return to Dr. Dugan, claimant filed an Application for Preliminary Hearing and requested that Dr. Prostic be designated as the treating physician. At the conclusion of the evidentiary hearing, the Assistant Director granted claimant's request.

Respondent argues that the Assistant Director violated provisions of K.S.A. 1997 Supp. 44-510(c)(1) which states in pertinent part as follows:

If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider.

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Jurisdiction is described in <u>Allen v. Craig</u>, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

Whether an administrative law judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. An administrative law judge has the jurisdiction to decide this question. <u>Briceno v. Wichita Inn West</u>, Docket No. 211,226 (February 1997) and <u>Graham v. Rubbermaid Specialty Products</u>, Docket No. 219,395 (June 1997).

**WHEREFORE**, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issue raised and the Order for Medical treatment entered by the Assistant Director on July 8, 1998 should, and does, remain in effect.

#### IT IS SO ORDERED.

Dated this day of October 1998	8.
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# **BOARD MEMBER**

c: C. Albert Herdoiza, Kansas City, KS John M. Graham, Jr., Overland Park, KS Brad E. Avery, Administrative Law Judge Philip S. Harness, Director